

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

KEVIN L. BAIRD
Plaintiff,

vs.

OTGONBAATAR SHAGDARSUREN
& DBN CARRIER, INC.
Defendants.

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CIVIL ACTION NO: 3:17-CV-2000

DEFENDANT OTGONBAATAR SHAGDARSUREN'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. Sections 1441 and 1446, Defendant Otgonbaatar Shagdarsuren ("Shagdarsuren") serves this Notice of Removal from the County Court at Law Number 3, of Dallas County, Texas, to the United States District Court for the Northern District of Texas, Dallas Division, on the basis of diversity of citizenship. The Notice of Removal is based upon the following grounds:

1. **Description of Lawsuit.** This is a suit involving a motor vehicle accident between a tractor-trailer and an automobile which took place in Garland, Dallas County, Texas. Plaintiff asserts a claim for negligence against Shagdarsuren, the driver of the tractor-trailer, and his alleged employer, Defendant DBN Carrier, Inc. ("DBN.")
2. **Diversity Jurisdiction.** At the time of the filing of Plaintiff's Original Petition and this Notice of Removal, Plaintiff Kevin L. Baird ("Baird") is a citizen and resident of the State of Texas. *See* Plaintiff's Original Petition at 1.
3. At the time of the filing of Plaintiff's Original Petition and this Notice of Removal, Shagdarsuren is a citizen of Mongolia lawfully admitted to the United States and domiciled in

Buena Park, California. Shagdarsuren's application for permanent residency is currently pending.

4. At the time of the filing of Plaintiff's Original Petition and this Notice of Removal, DBN is and was a corporation incorporated and existing under the laws of the State of California with its principal place of business in Paramount, California.

5. Jurisdiction exists under 28 U.S.C. § 1332(a) as Baird is a citizen of Texas, Shagdarsuren is a citizen of Mongolia, and DBN is a citizen of California. Shagdarsuren's pending application for permanent residency does not affect jurisdiction in any way given that he is domiciled in Buena Park, California. *See* 28 U.S.C. § 1332(a)(2).

6. **Venue.** Pursuant to 28 U.S.C. § 1441(a), venue is proper in the Dallas Division of the Northern District of Texas because it is the district and division with authority over and embracing the place where the action is pending.

7. **Amount in Controversy.** This is a civil action. The amount in controversy is in excess of \$75,000, exclusive of interest and costs. The amount in controversy is determined at the time of removal. *Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 883 (5th Cir. 2000). If a defendant establishes by a preponderance of the evidence that the amount in controversy is greater than the jurisdictional amount, a plaintiff may defeat removal only by establishing "to a legal certainty that his or her recovery will not exceed the statutory threshold." *In re 1994 Exxon Chem. Fire*, 558 F.3d 378, 387 (5th Cir. 2009).

8. The Court determines whether the defendant has satisfied the amount in controversy requirement by first asking whether it is "facially apparent" from the state court petition that the claims exceed \$75,000 in value. *Allen v. R.H. Oil & Gas Co.*, 63 F.3d 1326, 1336 & n. 16 (5th

Cir. 1995). In the instant case the amount in controversy is readily apparent as Plaintiff has pled for damages in excess of \$200,000. *See* Plaintiff's Original Petition at 1.

9. By virtue of diversity of citizenship and the amount in controversy, this Court has jurisdiction over this matter. 28 U.S.C. § 1332.

10. Process and Plaintiff's Original Petition in Cause No. CC-17-03155, pending in the Country Court at Law Number 3 of Dallas County, Texas, was served on Shagdarsuren for the first and only time less than 30 days from the date of the filing of this Notice of Removal and this Notice is being filed within one year of the date suit was filed in State Court.

11. Simultaneously with the filing of this Notice of Removal, Shagdarsuren is filing a copy of all processes, pleadings and orders served in State Court. A copy of this Notice is also concurrently being filed with the State Court and served upon all counsel of record.

WHEREFORE, PREMISES CONSIDERED, Defendant Otgonbaatar Shagdarsuren prays that this action be removed to this Court from the District Court of Dallas County, Texas, for trial and determination.

Dated this ____ day of July, 2017.

Respectfully Submitted,

BY: /s/ Darrell G. Adkerson
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that on this, the 28th day of July, 2017, a true and correct copy of the above and foregoing document has been forwarded to the counsel of record, as indicated below:

William L. Shirer
McGilberry & Shirer, LLP
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Dallas, Texas 75240

Counsel for Plaintiff

_____ Via Hand Delivery
____ Via Certified Mail Return Receipt Requested
_____ Via Facsimile
_____ Via Regular Mail
__x__ Via the Court's ECF System

_____/s/ Darrell G. Adkerson_____
DARRELL G. ADKERSON